



California Fair Political Practices Commission

March 27, 1987

Stephen D. Schuett
Deputy County Counsel
1415 Truxtun Avenue, Fifth Floor
Bakersfield, CA 93301

Re: Your Request for Advice
Our File No. A-87-065

Dear Mr. Schuett:

You have requested advice on behalf of Supervisor Pauline Larwood regarding her duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Is Supervisor Larwood prohibited from participating in a decision to renew a lease agreement between the county medical center and a private medical corporation by virtue of the fact that her husband is an attendant physician at the county medical center and is engaged in a private medical practice?

CONCLUSION

Supervisor Larwood may participate in the decision to renew the lease agreement.

FACTS

An existing lease agreement between the Kern Medical Center ("KMC") and Kern Faculty Medical Group ("KFMG") is being considered for renewal and will require the approval of the Board of Supervisors.

KFMG is a private medical corporation comprised of county physicians and is the vehicle through which some county physicians engage in private medical practice as authorized by their employment contracts. The physicians see private patients during hours not required to fulfill their obligations

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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to the county. KFMG leases space at KMC for clinic and administrative space.

Supervisor Larwood's husband, Dr. Thomas R. Larwood, is a member of the attendant physician staff at KMC and a private physician. He is not a county employee and receives no compensation from the county. His medical practice is carried on by a medical corporation, Thomas R. Larwood, M.D. Inc. Supervisor Larwood and Dr. Larwood have no investment or other interest in KFMG.^{2/}

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on among others:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more....

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a) and (c).

Supervisor Larwood has an investment interest in her husband's medical corporation, Thomas R. Larwood, M.D. Inc. The medical corporation is also a source of income to her. Accordingly, she may not participate in any decision which will have a reasonably foreseeable material financial effect on her husband's medical corporation.

^{2/} You also indicated that Dr. Larwood has an investment interest in San Dimas-Clinicians Health Network, a professional corporation. Since this interest is worth less than \$1,000, it does not constitute an investment and consequently it does not create a basis for disqualification under the Act. (Sections 82034 and 87103(a).)

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In this case, the determinative question is the foreseeability of a material financial effect upon Supervisor Larwood. An effect is reasonably foreseeable if there is a "substantial likelihood" that it will occur. Certainty is not required; however, if the effect is but a "mere possibility," it is not considered reasonably foreseeable. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1976), copy enclosed.)

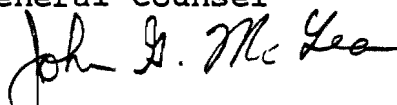
In the opinion which you prepared for Supervisor Larwood (copy attached), you concluded that the decision regarding the lease agreement would not have a reasonably foreseeable material financial effect on Dr. Larwood's medical corporation. We agree. It can be argued that private physicians are in competition for the same patient pool. However, in our telephone conversation, you indicated that failure to renew the lease agreement would not inhibit KFMG's physicians from practicing. KFMG would merely rent space elsewhere and continue to see their patients. Furthermore, while the overhead of KFMG's physicians could be affected by the rent required under the lease agreement, in order to conclude that a modification in their rent would affect Dr. Larwood's medical practice, one must assume that demand for physician services is a function of cost, that the change in overhead would result in a change in the price charged for services by KFMG physicians, and that the KFMG change in price would result in Dr. Larwood gaining or losing patients as a result of the competition. Under these circumstances, we do not believe the decision on the lease agreement will have a reasonably foreseeable material financial effect on Dr. Larwood's medical corporation. Accordingly, Supervisor Larwood may participate in the decision. (See Advice Letter to Guy W. Kay, No. A-83-157 (copy enclosed.)

Your letter seems to indicate that Supervisor Larwood may also have questions with respect to voting on other issues affecting KMC. Please contact us if you would like advice on any specific situation.

If you have any questions, I may be reached at
(916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosures



OFFICE OF THE

COUNTY COUNSEL

P P C

Fifth Floor
Administration and Courts Building
1415 Truxtun Avenue
Bakersfield, California 93301

COUNTY OF KERN FEB 26 8 35 AM '87

BERNARD C. BARMANN
County Counsel

STATE OF CALIFORNIA

Telephone (805) 861-2326
861-2640

February 20, 1987

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804

Re: Request for Formal Written Advice

Gentlemen:

Pursuant to the provisions of Government Code section 83114(b) and section 18329 of Title 2 of the California Administrative Code we are requesting, on behalf of Supervisor Pauline Larwood, formal written advice concerning her duties as county supervisor with respect to voting on issues affecting Kern Medical Center. Her written authorization is attached. Supervisor Larwood's mailing address is 1348 Norris Road, Bakersfield, California 93308.

Our office recently prepared an opinion for Supervisor Larwood which concluded she did not have a conflict of interest in voting on certain matters relating to Kern Medical Center by virtue of her husband's private medical practice. A copy of that opinion is attached. Supervisor Larwood is requesting formal written advice on the issue presented in that opinion.

Please do not hesitate to contact our office if you need any further information or have any questions.

Very truly yours,

B.C. BARMANN, County Counsel

By

A handwritten signature in cursive script, appearing to read "Stephen D. Schuett".

Stephen D. Schuett, Deputy

SDS:w1
87.1010.03

BOARD OF SUPERVISORS

SUPERVISORS

ROY A. ASHBURN	District No. 1
BEN AUSTIN	District No. 2
PAULINE LARWOOD	District No. 3
TRICE HARVEY	District No. 4
MARY K. SHELL	District No. 5



SHARON CLARK
Clerk of Board of Supervisors
Administration and Courts Building
1415 Truxtun Avenue
Room 600
Bakersfield, California 93301
Telephone (805) 861-2167

February 20, 1987

To: the Fair Political Practices Commission

I hereby authorize the Office of the County Counsel for Kern County to seek formal written advice from the Commission with respect to my duties as a supervisor in voting on issues relating to Kern Medical Center.


Pauline Larwood, Supervisor

MEMORANDUM

OFFICE OF COUNTY COUNSEL, COUNTY OF KERN

TO: Supervisor Pauline Larwood

FROM: B.C. Barmann, County Counsel
By Stephen D. Schuett, Deputy

DATE: February 10, 1987

SUBJECT: Potential Conflict of Interest With Respect to Kern
Medical Center

You have asked us to review whether you have a conflict of interest in voting on issues concerning Kern Medical Center ("KMC") and in particular its relationship with Kern Faculty Medical Group ("KFMG"). We are advised that the existing lease agreement between KMC and KFMG is being considered for renewal and will require the approval of the Board of Supervisors.

KFMG is a private medical corporation comprised of County physicians and is the vehicle through which some County physicians engage in private medical practice as authorized by their employment contracts. The physicians see private for pay patients during hours not required to fulfill their obligations to the County. KFMG leases space at KMC for clinic and administrative space.

Your husband, Dr. Thomas R. Larwood, is a member of the attendant physician staff at KMC and a private physician. His medical practice is carried on by a medical corporation, Thomas R. Larwood, M.D. Inc. That medical corporation is a source of income to you. Dr. Larwood's other position involves no compensation. Also, you have, for purposes of the conflict of interest laws, an investment interest in that corporation as well as in the San Dimas Primary Care Building partnership. Dr. Larwood is also going to be a shareholder in San Dimas-Clinicians Health Network, a Medical Group, Inc. However, because the investment is less than \$1,000, there is no "financial interest" under the Fair Political Practices Act.

QUESTION PRESENTED

Is it reasonably foreseeable that the decisions concerning Kern Medical Center and KFMG will have a material financial effect on you or your immediate family or on any source of income or any business entity in which you have an investment?

CONCLUSION

Based on the stated facts, we do not believe that you have a material financial interest which will be affected by your vote on the renewal of the lease between KFMG and the County. Therefore, you do not have any conflict of interest which would prevent your voting on this matter. Any possible impact on a source of income to you or on any business entity in which you have an investment is so speculative and remote that no conflict of interest would arise.

ANALYSIS

Government Code section 87100, part of the Political Reform Act of 1974 (Gov. Code §81000 et seq.; all references are to the Gov. Code unless otherwise stated) contains the basic conflict of interest prohibition and provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

There is no question but that you are a public official (section 82048) and that by voting on the lease you would be making a governmental decision (2 Cal. Adm. Code section 18700[b]). Accordingly, the determinative issue is whether you have a "financial interest" in this decision.

Government Code section 87103 defines "financial interest" as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

- (c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse . . . of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Your interests bring you within the provisions of sections 87103(a) and (c) relating to investments in business entities and sources of income. The question, then, is whether it is "reasonably foreseeable" that the decisions to be made concerning KMC and/or KFMG will have a "material" financial effect, which is distinguishable from its effect on the public generally, on you or on those interests.

With respect to foreseeability, the test is not whether an effect is conceivable, but whether there is a substantial probability or likelihood that the effect will occur. 1 FPPC 198 (No. 75-089, Dec. 4, 1975). Will the execution of a lease between the County and KFMG have a foreseeable effect on you or on your interests? We think not.

If we assume that private physicians are in competition for the same patient pool, that demand for physician services is solely a function of price and that price is based, in part, on the cost associated with providing services, it is conceivable that by changing one of the costs, e.g. rent, of one of the groups in competition with Dr. Larwood the demand for his services, and therefore the income of his corporation, would be affected. However, this scenario requires several unrealistic assumptions and seems highly improbable.

These assumptions could also be used to provide a conceptual basis for finding that there would be an impact on your investments which are related to the provision of medical services. (Any investment in San Dimas-Clinicians Health Network is not a "financial interest" under 87103(a); however, the effect, if any, would seem remote.) Again, whether this result is foreseeable seems highly problematic.

Even should we assume that the decision would have a "foreseeable" impact section 87100 requires that the impact be material. The regulations of the Fair Political Practices Commission (2 Cal. Adm. Code §18702) establish specific guidelines to consider in determining materiality. However, because the impact, if any, is not possible to quantify we do not think it necessary to attempt to analyze this problem with respect to those guidelines. It may be helpful to test the facts under the general test of materiality used by the courts and which is in 2 Cal. Admin. Code §18702(a), i.e., that

Supervisor Pauline Larwood
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a financial effect is material if at the time the decision is made the interest might interfere with the official's performance of his or her duties in an impartial manner free from bias. See, e.g., Terry v. Bender (1956) 143 Cal.App.2d 198, 206, construing Government Code section 1090's prohibition of interest in a contract. Under this test, we conclude that there is no significant effect which would create a prohibited conflict of interest under section 87100.

We would, nevertheless, caution you that the determination of the existence of a conflict of interest under section 87100 or any other applicable section must be made on the facts of each decision and the existence of a "material" financial effect. We do not believe that under the facts stated there will be any conflict for you with respect to normal decisions which the Board of Supervisors make with respect to KMC or its relationship with KFMG. Should any such decisions come within the parameters as discussed herein we suggest that you contact our office for a review of the specifics of that situation.

Finally, the determination of a conflict of interest can best be handled by the Fair Political Practices Commission pursuant to section 83114(b) by requesting the Commission to provide you with formal written advice on this issue. Formal written advice by the Commission is the application of the law to a particular set of facts which will provide guidance to the requestor and civil immunity under section 83114(b). Pursuant to your request we will be forwarding this opinion to the Commission for formal written advice.


STEPHEN D. SCHUETT

SDS:drb

87.1010



California Fair Political Practices Commission

February 27, 1987

Stephen D. Schuett
Deputy County Counsel
Administration and Courts Building
1415 Truxton Avenue, Fifth Floor
Bakersfield, CA 93301

Re: 87-065

Dear Mr. Schuett:

Your letter requesting advice under the Political Reform Act was received on February 26, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John G. McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh
cc: Pauline Larwood, Supervisor